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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

Implementation of Sections of the
Cable Television Consumer Protection
and Competition Act of 1992

Rate Regulation

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) MM Docket No. 92-266
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REPLY COMMENTS OF THE DISNEY CHANNEL

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February 11, 1993

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REPLY COMMENTS OF THE DISNEY CHANNEL

The Disney Channel submits these reply comments in response to Initial Comments filed in the above-captioned Notice of Proposed Rulemaking ("NPRM") proceeding. The Disney Channel is a 24-hour, satellite-delivered, commercial-free, premium programming service.

INTRODUCTION

The Disney Channel (also referred to herein as the "Service") is offered to consumers primarily through its cable affiliates. The Disney Channel provides its cable affiliates with flexibility to offer the Service to consumers to best meet each cable operator's market demands and market objectives. In practice, this means that cable operators in different markets offer the Service in different ways: on an a la carte, separate fee, per channel basis; and/or as part of a package of premium services usually at a retail price discounted from the sum of the a la carte prices; and/or as part of an optional, upper tier of cable programming services. As a rule, The Disney Channel is not offered to consumers as part of the cable system's lowest level or basic service tier of programming services.

**THE DISNEY CHANNEL SUPPORTS THE PASS
THROUGH OF ALL PROGRAMMING COSTS**

The Disney Channel agrees with those entities which filed Initial Comments with the Federal Communications Commission ("Commission") on January 27, 1993, that, regardless of the approach adopted by the Commission for regulating the price of optional, upper tiers of cable programming service, cable operators should be able to pass through programming costs to consumers in their entirety, with an allocation for a reasonable profit, without triggering any rate regulation proceeding.^{1/}

The Disney Channel does not agree with those who support an upper tier rate regulatory approach which results in a per channel or per tier price cap^{2/} (or a regulatory scheme which effectively results in same). Because The Disney Channel has a high percentage of original programming and is commercial-free, its per channel cost to the cable operator is likely to exceed the average per channel cost of an advertiser-supported programming service. Therefore, The Disney Channel could be unfairly discriminated against and no longer considered by cable operators for placement on a tier should per channel or per tier price caps be instituted for optional, upper tiers of service.

In addition, if the Commission does not adopt a regulatory approach which allows the cable operator to pass through programming costs with an allocation for a reasonable profit, the goals and objectives of the Cable Television Consumer

1/E! Entertainment Television, Inc.; International Family Entertainment, Inc.; Motion Picture Association of America, Inc.

2/Consumer Federation of America

Protection and Competition Act of 1992 ("1992 Cable Act") will not be fulfilled.^{3/} In those cable systems in which The Disney Channel has been added to an optional, upper tier of service (rather than offered on an a la carte, separate fee, per channel basis), there has been broad consumer acceptance and indeed, consumer enthusiasm for the inclusion of The Disney Channel on the tier, even if this new placement was accompanied by a rate increase. Notwithstanding this strong consumer support, however, if in the future cable operators are not allowed to pass through programming costs to consumers, they would be unlikely to add to their optional, upper tiers of service, quality, commercial-free programming services which may cost a little more, such as The Disney Channel, for fear of having to spend valuable time and resources defending their decisions to the Commission. Consumers, who the 1992 Cable Act was passed to protect^{4/} and who have endorsed the idea of receiving The Disney Channel on a tier with other cable programming services for one price, surely will be the losers if this occurs.

Further, in order to protect the confidentiality of individual cable programming service rate information, the regulations adopted by the Commission should provide proper safeguards to protect unnecessary public disclosure of such confidential information.

**THE DISNEY CHANNEL REQUESTS
THAT PROMOTIONAL DISCOUNT RATES BE AN EXCEPTION TO THE
REQUIREMENT OF A GEOGRAPHICALLY
UNIFORM RATE STRUCTURE**

Cable operators, like most other retailers, periodically offer consumers, for a limited period of time, their services -- in this case premium programming services -- for a discounted, or sale, price. The issue of promotional discounts was raised by the Commission in conjunction with its discussion of Regulation of Rates for

3/§2(b) (3) of the 1992 Cable Act
4/§2(b) (4) of the 1992 Cable Act

Equipment,^{5/} but it was not raised as a point in the NPRM's sections on Uniform Rates or Discrimination.^{6/} If "cable service" as used in §623(d) of the Act includes premium services, offered on an a la carte, separate fee, per channel basis, then the regulations adopted by the Commission should allow promotional discounts to new subscribers as an exception to the requirement of a geographically uniform rate structure.

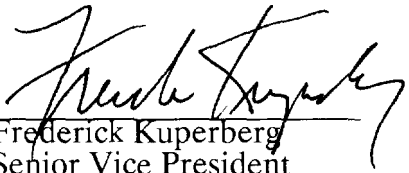
CONCLUSION

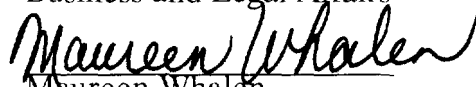
Clearly, the regulation of optional, upper tiers of service by the imposition of a per channel or per tier price cap would discourage a cable operator from adding a commercial-free, premium cable programming service to an optional, upper tier. In addition, adding a premium service to an optional, upper tier would also be economically unfeasible for cable operators if cable programming service costs cannot be passed through to consumers. Because experience has shown that consumers appreciate the opportunity to receive a premium cable service, such as The Disney Channel, on optional, upper tiers of service, The Disney Channel encourages the Commission to provide for the pass through of cable programming costs to consumers and to disallow the imposition of a per channel or per tier price cap. Finally, The Disney Channel advocates that the Commission, in adopting its regulations on geographically uniform rates, clearly allow for cable operators to offer promotional discounts for premium services to encourage new subscriptions.

5/NPRM at Paragraph 70.

6/NPRM, §5, Paragraph 111-115; Paragraph 116-117.

These reply comments of The Disney Channel have been respectfully
submitted:

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